

**U.S. Senate Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Fiscal Year 2022 Budget Request for the Environmental Protection Agency
June 9, 2021**

**Questions for the Record Submitted to EPA Administrator Michael Regan
from Senator Van Hollen**

Question 1: For decades, the State of Maryland has worked diligently to address transported pollution to meet air quality standards and to protect the health of our constituents. In 2018, the Trump EPA denied Maryland's Good Neighbor Petition under Section 126(b) of the Clean Air Act regarding 36 upwind electric generating units in 5 other states to provide Maryland with relief from downwind air pollution.

On May 9, 2020, the DC Circuit Court of Appeals granted Maryland's Good Neighbor Petition for review in part and remanded this issue to the EPA. On March 15, 2021, EPA finalized the Revised Cross-State Air Pollution Rule (CSAPR) Update –first proposed in October 2020 – in order to resolve outstanding interstate pollution transport obligations for the 2008 ozone National Ambient Air Quality Standards.

Maryland has had a multi-year effort to address cross-state pollution and I thank you for work to revise the Cross-State Air Pollution Rule to address issues like ours. How will the CSAPR Update reduce the interstate transport of nitrogen oxide pollution, and support states like Maryland in meeting our clean air standards?

RESPONSE: On March 15, 2021, EPA finalized the Revised Cross-State Air Pollution Rule Update for the 2008 ozone National Ambient Air Quality Standards (NAAQS). Starting in the 2021 ozone season, the rule will require additional emissions reductions of nitrogen oxides (NO_x) from power plants in 12 states in the eastern United States, improving air quality and public health for millions of Americans. EPA estimates that the Revised CSAPR Update will reduce NO_x emissions from power plants starting in 2021, with reductions reaching 18,000 tons in 2022 compared to projections without the rule. Over the period from 2021 to 2040, EPA estimates that the rule will yield public health and climate benefits that are valued, on average, at up to \$2.8 billion each year.

Question 2: Many best management practices or BMPs that are utilized to improve water quality in the Bay watershed have other co-benefits as it pertains to climate resilience, wildlife or ecosystem restoration or in helping to solve other environmental challenges. Does the EPA have or plan to create any system for quantifying these co-benefits for specific BMPs?

RESPONSE: EPA collaborates with other Chesapeake Bay Program partners to develop science and tools to advance understanding of the possible co-benefits associated with implementation of water quality BMPs. EPA has several ongoing efforts to quantify ecosystem services and co-benefits of best management practices, including co-benefits related to climate resilience, wildlife, and ecosystem restoration. Early work provided a qualitative approach to understanding co-benefits of BMPs used for water quality improvements.

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Building on this effort, EPA is currently developing a methodology to identify and quantify ecosystem service co-benefits of nutrient and sediment-reducing BMPs, utilizing the EPA-developed National Ecosystems Classification System-plus framework. EPA is evaluating options for integrating information generated from this research into the Chesapeake Assessment Scenario Tool.

Question 3: We are at a very critical junction in the implementation of the Chesapeake Bay Total Maximum Daily Load (TMDL) and our mutual goal of clean water by 2025. In April, I and my Bay Watershed colleagues sent you a letter detailing our concerns with the watershed's ability to meet the Bay TMDL without sufficient assistance and accountability.

While I am grateful for your response and commitment to "providing funding and technical assistance, tracking and reporting progress, [and] coordinating and facilitating partnerships to support pollution reduction efforts," I also note the absence of any commitment to take necessary enforcement measures. What specific actions within your enforcement authorities under the Clean Water Act are you prepared to take to ensure *all* watershed states get back on track to meet their 2025 goals?

RESPONSE: EPA is committed to taking the action needed to help ensure the jurisdictions meet the Chesapeake Bay TMDL's 2025 goals in order to protect this national treasure. I have asked our team to consider all appropriate tools and actions available to EPA to help accelerate progress where it is lagging, including the use of EPA's enforcement authorities where warranted.

EPA will focus its enforcement and programmatic resources to assist the jurisdictions in achieving their commitments. Reflecting the Bay's high priority for EPA, President Biden's FY22 budget proposes an increase of approximately \$3 million to increase support for projects to accelerate the restoration of the Chesapeake Bay focusing on a number of outcomes, including improving water quality and promoting climate resiliency.

**Questions for the Record Submitted to EPA Administrator Michael Regan
from Senator Blunt**

Question 1: The budget justification for the Environmental Protection Agency notes several priorities related to its management and implementation of the Renewable Fuel Standard. In addition to setting the statutory deadlines for setting the volume requirements under the law, page 24 details additional efforts centered upon:

- 1) revising and improving the RFS regulations to improve its operation;*
- 2) reviewing and approving the use of new biofuels and/or their feedstocks;*

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- 3) registering new facilities to enable them to generate RINs (the credits under the Program);*
- 4) operating and upgrading the electronic moderated transaction system (EMTS) to provide oversight and verify compliance with the RFS Program;*
- 5) ensuring the integrity of the RFS Program through enforcement actions against those using the program for fraudulent gain; and*
- 6) supporting the Department of Justice in defending the Agency's implementation of the RFS Program in the numerous challenges in court.*

The Environmental Protection Agency has not made progress for several years on the review and approval of qualified D3 RIN-qualified cellulosic biofuel. This is unfortunate as the delays have stifled innovation that could result in a significant increase in ethanol output from the same bushel of corn.

To that end, under the work plan enumerated in the budget justification, does the Environmental Protection Agency intend to renew its efforts to review and approve D3 registrations under Title 40 CFR Part 80, especially those related to corn kernel fiber? If so, can you provide certainty that this effort will not preclude the use of peer reviewed analytical chemistry methods with appropriate guidelines to be finalized, published, and followed?

RESPONSE: The Renewable Fuel Standard (RFS) Program remains a high priority for EPA, and we continue to strive to improve our implementation of the program. Over the past several years, EPA has approved numerous new RFS fuel pathways, and we are constantly evaluating new pathway applications and registration requests under the program. We continue to prioritize processing additional applications and registrations, however, some of the new fuel pathway applications, including some for certain pathways such as ethanol from corn kernel fiber, are complex in nature and often take a significant amount of time to process. Earlier this year, the Department of Energy's (DOE) National Renewable Energy Laboratory developed and published a new public analytical procedure for corn kernel fiber. We will continue working with interested stakeholders to leverage DOE's new method. In implementing the RFS program, we are committed to moving forward in a way that follows the law, follows the science, is transparent, preserves the integrity of the program, and provides certainty.

Question 2: President Biden's climate plan calls for "doubling down on the liquid fuels of the future, which make agriculture a key part of the solution to climate change." Yet, scores of facility registrations submitted by American entrepreneurs across rural America for cellulosic ethanol made from corn fiber against a pathway under the RFS that is already approved have been sitting at EPA, awaiting action, some for more than 4 years. What has the administration done to make it a priority to move these cellulosic biofuel facility registrations?

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RESPONSE: The RFS program has played a key role in driving the development and use of biofuels, especially advanced biofuels, and that will continue during the Biden Administration. Over the past several years, EPA has approved numerous new RFS fuel pathways, and we are constantly evaluating new pathway applications and registration requests under the program. We continue to prioritize processing additional applications and registrations, however, some of the new fuel pathway applications, including some for certain pathways such as ethanol from corn kernel fiber, are complex in nature and often take a significant amount of time to process. Earlier this year, the Department of Energy's (DOE) National Renewable Energy Laboratory developed and published a new public analytical procedure for corn kernel fiber. We will continue working with interested stakeholders to leverage DOE's new method. In implementing the RFS program, we are committed to moving forward in a way that follows the law, follows the science, is transparent, preserves the integrity of the program, and provides certainty.

Question 3: Last week the Acting Assistant Administrator for the Office of Air and Radiation at the EPA gave an interview in which he declined to answer whether biofuels have reduced carbon emissions, saying he had not yet had time to look into this. Yet, since the Biden Administration took office, the United States has:

- Adopted a commitment under the Paris Agreement to reduce greenhouse gas emissions by 50-52% by 2030;
- Released a comprehensive infrastructure proposal focused in part on cutting carbon emissions
- Extended the RFS compliance deadlines for refiners for 2020 until January 31, 2022;
- Failed to prioritize facility registration applications for production of the lowest carbon fuel we have today – cellulosic ethanol from corn fiber -- that have been languishing in some cases for five years at the Agency;
- Failed to move a proposed rule for the 2021 RFS blending volumes a full six months into the compliance year; and
- Failed to fulfill the requirements of a Court remand from 2017 to restore 500 million gallons of blending volumes that were inappropriately waived from the 2016 RVO.

Administrator Regan, in your experience to date, is this administration planning to make biofuels a centerpiece of its commitment to innovation, climate mitigation, and job creation?

RESPONSE: The RFS program has played a key role in driving the development and use of biofuels, especially advanced biofuels, and that will continue during the Biden Administration.

Question 4: The Energy Information Administration projects that about 80% of new vehicle sales will be gasoline or flex-fuel powered, not to mention the ongoing use of gasoline for decades to come by cars on the road today. Given the new goals adopted by President Biden to cut emissions by 50-52% by 2030, we must deploy every solution we have to meet this goal,

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including cutting greenhouse gas emissions by 46%-120% in the case of ethanol and 74% in the case of biodiesel from every gallon of fuel we use. Investing in biofuel infrastructure will help deliver higher blends of ethanol and biodiesel into the marketplace to speed decarbonization of the vehicle transportation sector. Does the Administration intend to use funding proposed in the American Jobs Plan for biofuel infrastructure?

RESPONSE: The American Jobs Plan and the President's budget are complementary policies that work together to address the major challenges of our time. The American Jobs Plan would make a one-time, transformational investment that America has put off for too long. It would invest in our nation's crumbling infrastructure and allow us to achieve the dual goals of reducing pollution and creating jobs. The President's plan will create a more resilient grid, lower energy bills for middle class Americans, improve air quality and public health outcomes, and create good jobs, with a choice to join a union, on the path to achieving 100 percent carbon-free electricity by 2035.

The President's budget proposes the investments needed to advance EPA's mission across the board, including major investments to support the Agency's work on climate and environmental justice. The President's budget proposes a \$13 million increase in funding for the Federal Vehicle and Fuels Standards and Certification program, which houses the RFS program. A large portion of the EPA's efforts on fuels will support the ongoing implementation of the RFS program.

**Questions for the Record Submitted to EPA Administrator Michael Regan
from Senator Capito**

Question 1: During the hearing, Senator Murkowski posed several questions to you on PFAS, including requesting details on the Agency's timeline for listing PFAS as a hazardous substance. In response, you stated that, "I will have staff provide you with that information." As you know from our previous discussions and my April 19, 2021 letter to you on EPA's PFAS actions, I am interested in being kept up to date on all of the Agency's actions addressing PFAS. Do you commit to providing me with regular updates on all PFAS actions, including any activities related to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA)?

RESPONSE: EPA is looking at various types of scientific information related to designating certain PFAS, specifically PFOA and PFOS, as CERCLA hazardous substances. This information includes the most up to date chemical and physical characteristics, toxicity and kinetics, environmental prevalence, and manufacturing and use data.

I understand the importance of Congress' need to obtain information necessary to perform its legitimate oversight functions and I am committed to working with EPA staff to accommodate your interests.

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Question 2: One of the issues I raised with you during the hearing was the EPA’s budget request of hundreds of millions of dollars for environmental justice activities. Do you agree with the White House Environmental Justice Advisory Council (WHEJAC) that investment in carbon capture, utilization, and sequestration (CCUS), nuclear power, and fossil fuel-related infrastructure projects do not benefit environmental justice communities?

RESPONSE: The FY 2022 President’s Budget is rooted in EPA’s commitment to advancing environmental justice, tackling climate change, protecting public health, improving infrastructure, and rebuilding the EPA workforce to accomplish the EPA’s mission. The Budget includes an increase of \$1.8 billion in programs across EPA to tackle the climate crisis while also delivering environmental justice to marginalized and over-burdened communities, investing in local economies, and creating good-paying jobs.

As you reference, in response to charge questions from the White House Council on Environmental Quality (CEQ), the White House Environmental Justice Advisory Council (WHEJAC) issued recommendations on the administration and implementation of Justice40 in May 2021. After receiving those recommendations, the White House issued [interim implementation guidance for the President’s Justice40 Initiative](#). EPA is committed to implementing this guidance in accordance with our statutory authorities to achieve the 40-percent goal.

Question 3: In response to my question related to eligibility of nuclear power and CCUS projects for environmental justice grants, you stated that EPA has not yet “looked at CCUS as an environmental justice issue because [EPA has not] gotten to the point where we’re actually permitting projects to determine the implications on potential sites.” You explained that considering CCUS and nuclear power as an environmental justice issue is a “site-by-site” issue. Do you commit to providing an update to the committee once EPA encounters a “site-by-site” issue regarding CCUS or nuclear power?

RESPONSE: I understand the importance of Congress’ need to obtain information necessary to perform its legitimate oversight functions and I am committed to working with EPA staff to accommodate Congress’ interests.

Question 4: Can you provide details on the role EPA has and the parameters that would be used by the Agency in evaluating projects on a site-by-site basis, including how EPA plans to evaluate environmental justice funding related to CCUS and nuclear projects?

RESPONSE: EPA is committed to implementing the [interim implementation guidance for the President’s Justice40 Initiative](#) in accordance with our statutory authorities to achieve the Administration’s 40-percent goal.

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Question 5: In one of his early Executive Orders,¹ President Biden set a goal of ensuring 40 percent of federal investments are directed to disadvantaged communities. Do you believe the term “disadvantaged communities” as used in the Justice40 initiative includes energy communities, like coal communities in West Virginia?

RESPONSE: EPA is committed to implementing the [interim implementation guidance for the President’s Justice40 Initiative](#) in accordance with our statutory authorities to achieve the Administration’s 40-percent goal. The interim guidance calls for agencies to “consider appropriate data, indices, and screening tools to determine whether a specific community is disadvantaged based on a combination of variables that may include, but are not limited to, the following:

- Low income, high and/or persistent poverty
- High unemployment and underemployment
- Racial and ethnic residential segregation, particularly where the segregation stems from discrimination by government entities
- Linguistic isolation
- High housing cost burden and substandard housing
- Distressed neighborhoods
- High transportation cost burden and/or low transportation access
- Disproportionate environmental stressor burden and high cumulative impacts
- Limited water and sanitation access and affordability
- Disproportionate impacts from climate change
- High energy cost burden and low energy access
- Jobs lost through the energy transition
- Access to healthcare ...”

Question 6: In March, you fired all 44 members of the Science Advisory Board (SAB) and the seven members of the Clean Air Scientific Advisory Committee (CASAC). You stated the move was necessary since the panels were “out of balance,” and that the members were “not representative of the needs” of the Agency. On June 18th, you instated members of CASAC, but members of SAB have not yet been selected.² Can you explain how you plan to undertake technical rulemakings under the Clean Air Act that would be supported by this year’s budget without SAB membership in place?

RESPONSE: After joining the EPA as Administrator in March, I consulted with career staff and career scientists and determined that the Science Advisory Board and Clean Air Scientific Advisory Committee needed a fresh start to ensure the quality and independence of their science advice. In 2019, the Government Accountability Office concluded that the previous Administration did not follow EPA’s normal, established process for recruiting and appointing experts to these boards, which are critical to the integrity of EPA’s

¹ Exec. Order No. 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7619 (Feb. 1, 2021).

² <https://thehill.com/policy/energy-environment/559069-epa-announces-new-clean-air-advisors-after-firing-trump-appointees>

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regulatory process. This is a process that Democratic and Republican administrations have always followed, until the Trump administration. To move forward, we thanked current members for their service and sent out a *Federal Register* notice to recruit new members.

Following the EPA's request for nominations in April 2021, significant public interest resulted in 352 candidates seeking membership on the SAB. The membership solicitation, evaluation, and selection of these members used the Agency's time-tested, fair, and transparent process—correcting for process irregularities made in recent years. I selected 47 members for the Chartered SAB, including six prior members. The SAB will be comprised of 22 women and 25 men, including 16 people of color, making it the most diverse SAB since the committee was established. These selections are well-qualified experts with a cross-section of scientific disciplines and experience needed to provide advice to EPA leadership to help advance the Agency's mission. I believe this highly qualified, diverse group of experts will ensure that EPA is receiving sound science-based advice to inform our work to protect people and the environment from pollution. We worked expeditiously and deliberately to finalize the new SAB, and now we can move forward knowing EPA's work is guided by the most credible, independent expertise.

Question 7: During the hearing, I raised concerns about your recent announcement that EPA planned on revisiting the Clean Water Act section 401 certification rule and the general issue of infrastructure permitting. You stated that, while the Agency had not made any changes yet, you maintained the same position you had as a state regulator in North Carolina. Can you explain that position you held while in your role as a state regulator in North Carolina under the Clean Water Act and why it has not changed now that you are instated as EPA Administrator?

RESPONSE: As a former state regulator, the lack of certainty had been discouraging for us who are trying to get the business of our states done. As EPA Administrator, I have the opportunity to look back at what we have learned, what worked and what didn't, and apply those lessons to how we move forward.

EPA believes that Congress provided authority to states and Tribes under Clean Water Act section 401 to protect the quality of their waters from adverse impacts resulting from federally licensed or permitted projects. EPA recently announced its intent to revise the 2020 Clean Water Act Section 401 Certification Rule after determining that the rule erodes state and Tribal authority. Through this process, EPA intends to strengthen the authority of states and Tribes to protect their vital water resources.

Question 8: During the hearing, we discussed pipeline permitting. In your comments, you mainly deferred to the Federal Energy Regulatory Commission's (FERC) jurisdiction on siting and said that EPA's role was solely focused on review of site-by-site environmental impacts. On

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May 26, 2021, EPA's Office of Policy filed general comments³ to FERC on the certification of new interstate natural gas facilities. Do you endorse these comments filed by your Agency?

RESPONSE: On May 26, 2021, EPA responded to the Federal Energy Regulatory Commission's (FERC's) invitation to submit comments on the Certification of New Interstate Natural Gas Facilities. EPA reviewed FERC's notice and provided updated comments and recommendations for consideration based on the technical expertise, experience, and past reviews of FERC's National Environmental Policy Act (NEPA) documents by EPA's career staff.

Question 9: In response to Senator Reed's questions during the hearing on cybersecurity in the water sector, you noted the Administration's additional budget request of \$4 million and 6 FTEs for cybersecurity at EPA. Can you provide further details on this specific request, including what additional capabilities the proposed funding would provide, what the proposed 6 FTEs would be used for, and where the proposed 6 FTEs would be located in EPA and geographically?

RESPONSE: Cybersecurity represents a substantial concern for the water sector, given the ubiquitous access to critical water treatment systems from the internet. Recent attacks perpetrated by state and other actors and their clear potential to disrupt essential lifeline services, such as drinking water supplies, are prompting a growing recognition that the federal government should adopt a more aggressive posture towards cybersecurity. EPA will work with states, territories, and tribes to develop and train a cadre of technical assistance providers who can work directly with individual water systems to assess and enhance their cybersecurity practices. This multi-year effort requires EPA to work with the Nation's 52,000 community water systems, many of which have limited or no technical capacity to address cyber issues. EPA also would seek to train individuals on how to integrate cyber training into their sanitary survey assessments.

In addition to expanding direct technical assistance, and in discussions with the National Security Council, EPA is pursuing regulatory options in the near-term for addressing cybersecurity in the water sector. Under this effort, EPA also is requesting resources to develop policies and/or regulations and associated activities. EPA will publish guidance for public water systems on what cybersecurity practices are recommended for safe operation and EPA will develop a nationwide training effort for all states, sanitary survey inspectors, and all public water systems on compliance and cybersecurity in general.

In FY 2022, EPA will continue to fulfill its obligations as the Sector Risk Management Agency for the water and wastewater systems sector. EPA will partner with the water sector to promote cybersecurity practices and gauge progress in the sector's implementation of these practices as directed by the Cybersecurity Enhancement Act of

³ Rick Weber, *Kerry Rejects Notion Of Gas Pipelines As 'Stranded' In Low-Carbon Shift*, INSIDE EPA (June 14, 2021), <https://insideepa.com/climate-news/kerry-rejects-notion-gas-pipelines-stranded-low-carbon-shift> (EPA comment letter cited, https://insideepa.com/sites/insideepa.com/files/documents/2021/jun/epa2021_1111.pdf).

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2014. EPA will be conducting nationwide exercises and providing technical support on cybersecurity threats and countermeasures for about 200 water and wastewater utilities. The EPM Homeland Security: Critical Infrastructure Protection Program also can support cybersecurity related work.

Specifically, EPA will:

- Conduct one-day classroom exercises, at locations distributed nationally, on water sector cybersecurity. The exercises will address cybersecurity threats (including ransomware), vulnerabilities, consequences, best practices, and incident response planning;**
- Update and/or develop new course materials owing to the evolving nature of cyber threats, such as the recently documented role of Russian state actors in infiltrating water system industrial control processes and business enterprise functions;**
- Develop brief, targeted guidance documents for underserved segments of the water sector, such as small systems and technical assistance providers; and**
- Continue to implement a new training program for technical assistance providers that will create a nationwide, state-level network capable of providing direct assistance to water utilities in adopting and tracking cybersecurity practices in adopting and tracking cyber security practices as recommended in the sanitary survey guidance.**

Question 10: Can you please detail your coordination with the Cybersecurity Infrastructure Security Agency (CISA) regarding the water sector, including specifically whether EPA serves or would serve as the central repository where water utilities provide information on security issues?

RESPONSE: Under Presidential Policy Directive 21 (PPD-21), *Critical Infrastructure Security and Resilience*, each of the 16 critical infrastructure sectors has a Sector Risk Management Agency (SRMA), which serves as the federal lead responsible for that sector's security and resilience. PPD-21 designates EPA as the SRMA charged with ensuring that the water sector is prepared for any hazard, including cyber risks. EPA fulfills its critical mission in water sector cybersecurity in coordination with the Department of Homeland Security (DHS)'s Cybersecurity Infrastructure Security Agency (CISA), the Water Sector Coordinating Council of industry representatives, and other federal, state, local, tribal and territorial, and private sector partners by helping water and wastewater utilities prepare for, respond to, and recover from cyber-attacks. With respect to generating alerts and intelligence reports for the water sector, CISA is effective in translating intelligence information about new threats and exploitations into alerts with actionable mitigation procedures that water systems can follow, with EPA ensuring that these alerts reach a broad swath of the sector. In terms of the federal response to a cyber incident, PPD 41

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identifies three general concurrent lines of effort in responding to a significant cyber incident with CISA having the lead federal role for asset response (meaning that they provide technical assistance to affected entities to protect assets, mitigate vulnerabilities, and reduce impacts), while EPA as the Sector Risk Management Agency (SRMA) leads the Federal Government's efforts to understand the business or operational impacts of a cyber incident in the water sector. EPA encourages water sector entities to report cyber incidents to the FBI and CISA, which relay incident information to EPA and also may request EPA assistance in following up with the affected entity.

Question 11: I also submitted questions for the record to you following an April 28, 2021 hearing before the US Senate Committee on Environment and Public Works (EPW), of which I am Ranking Member. Those questions are reproduced here as an attachment. I am disappointed that I have not received responses to those questions, approximately six weeks after the questions were sent to you. When can I and the other members of EPW expect responses to their questions for the record?

RESPONSE: EPA responded on July 12, 2021.